

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 05-N-04146-RAP
HENDLEY CLAY HUTCHINSON,)	DECISION AND ORDER OF
Member No. 191891,)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT

I. Introduction

In this default matter, respondent **Hendley Clay Hutchinson** is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 955,¹ as ordered by the California Supreme Court on February 24, 2005, in S129836 (State Bar Court case No. 03-O-03112).

The court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

This proceeding was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar). The Notice of Disciplinary Charges (NDC) was filed and properly served via certified mail, return receipt requested, on respondent at his official membership records address on November 10, 2005. The mailing was not returned to the State Bar. A courtesy copy was also sent to respondent at 619 Paulin Avenue, Apt. 104, Calexico, California 92231. It, too, was not returned as undeliverable.

On December 5, 2005, the State Bar telephoned respondent at his official membership records number and left a message. Respondent did not return the call. On the same day, the State

¹All references to rule 955 are to California Rules of Court, rule 955.

Bar sent additional courtesy copies of the NDC to four other possible addresses based on its research.

On motion of the State Bar, respondent's default was entered on December 27, 2005. The order of entry of default was properly mailed to respondent's official membership records address. Respondent was enrolled as an inactive member under Business and Professions Code section 6007(e)² on December 30, 2005.

Respondent never filed a response to the NDC. (Rules Proc. of State Bar, rule 103.)

Respondent did not participate in the disciplinary proceedings. The court took this matter under submission on January 17, 2006, following the filing of State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on November 14, 1997, and has been a member of the State Bar since that time.

B. Violation of California Rules of Court, Rule 955

On February 24, 2005, in California Supreme Court case No. S129836 (State Bar Court case No. 03-O-03112), the Supreme Court suspended respondent from the practice of law for two years, stayed the execution of the suspension, and actually suspended him for 60 days and until he makes restitution and until the State Bar Court grants a motion to terminate his actual suspension under rule 205 of the Rules of Procedure of the State Bar. Among other things, the Supreme Court ordered respondent to comply with rule 955, subdivisions (a) and (c), within 120 and 130 days, respectively, after the effective date of the Supreme Court order, if he was actually suspended for 90 days or more. The order became effective March 26, 2005, and was duly served on respondent.

²All references to sections are to the Business and Professions Code, unless otherwise indicated.

Rule 955(c) mandates that respondent “file with the Clerk of the State Bar Court an affidavit showing that he ... has fully complied with those provisions of the order entered pursuant to this rule.”

On February 24, 2005, the Office of the Clerk of the California Supreme Court served upon respondent a copy of the Supreme Court order imposing discipline and directing respondent to comply with rule 955. Respondent received a copy of the order.

On March 8, 2005, the State Bar’s Office of Probation properly sent respondent a copy of the Supreme Court order, reminding him of the obligations to comply with rule 955. The mailing was returned as undeliverable.

Respondent was to have filed the rule 955 affidavit by August 3, 2005, but to date, he has not done so and has offered no explanation to this court for his noncompliance. Whether respondent is aware of the requirements of rule 955 or of his obligation to comply with those requirements is immaterial. “Wilfulness” in the context of rule 955 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Therefore, the State Bar has established by clear and convincing evidence that respondent wilfully failed to comply with rule 955, as ordered by the Supreme Court.³

C. Violation of Business and Professions Code Section 6103

Accordingly, respondent’s failure to comply with rule 955 constitutes a violation of section 6103, which requires attorneys to obey court orders and provides that the wilful disobedience or violation of such orders constitutes cause for disbarment or suspension.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating evidence was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds.

³Specifically, rule 955(d) provides that a suspended attorney’s wilful failure to comply with rule 955 constitutes a cause for disbarment or suspension and for revocation of any pending probation.

for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).⁴

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) In the underlying matter, California Supreme Court case No.S129836 (State Bar Court case No. 03-O-03112), effective March 26, 2005, respondent was suspended for two years, stayed, and was actually suspended for 60 days and until he makes restitution to Daria Cepeda in the amount of \$500 plus interest and until the State Bar Court terminates his actual suspension under rule 205 of the Rules of Procedure of the State Bar. His misconduct included unauthorized practice of law, failure to communicate, and failure to return unearned fees in a single client matter.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by failing to comply with rule 955(c) even after the NDC in the instant proceeding was filed. (Std. 1.2(b)(v).)

Respondent's failure to participate in this disciplinary matter prior to the entry of his default is a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

Respondent's wilful failure to comply with rule 955(c) is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been given opportunities to do so. Moreover, he had repeatedly failed to participate in these disciplinary proceedings by defaulting in the underlying matter and in the instant case.

Therefore, respondent's disbarment is necessary to protect the public, the courts and the legal community, to maintain high professional standards and to preserve public confidence in the legal

⁴All further references to standards are to this source.

profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his wilful disobedience of the Supreme Court order.

VI. Recommended Discipline

The court recommends that respondent **Hendley Clay Hutchinson** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 955, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.

VII. Costs

The court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VIII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007(c)(4) and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: April 10, 2006

RICHARD A. PLATEL
Judge of the State Bar Court